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RECENT CASE NOTES

ALIENS—NATURALIZATION—ERRONEOUS SPECIFICATION OF SOVEREIGN—ORDER NUNC PRO TUNC—An application for citizenship was made by a supposed German subject. Section 3 of the Naturalization Act of June 25, 1910, requires a declarant to express the intention "to renounce forever all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, and particularly by name, to the prince, potentate, state or sovereignty of which the alien may be at the time a citizen or subject." The declarant in the principal case, after the general renunciatory clause, renounced allegiance particularly to "William II, Emperor of Germany." At the hearing it appeared that the petitioner was a French citizen. By an order *nunc pro tunc* the words "French Republic" were substituted for "William II, etc." and citizenship was thereupon decreed. The United States brought a petition to cancel the certificate of naturalization. *Held*, that the petition should be allowed, because the *nunc pro tunc* order and final decree were erroneous. *United States v. Vogel* (Dec. 10, 1919) C. C. A. 2d, Oct. Term. 1919, No. 29.

The function of a *nunc pro tunc* order in judicial proceedings is to bring the record into conformity with the facts and not to supply retroactively a missing fact. *Liddell v. Landau* (1908) 87 Ark. 438, 112 S. W. 1085. Accordingly courts have sometimes refused *nunc pro tunc* corrections of declarations of intention in naturalization proceedings. *In re Lewkowicz* (1909, S. D. N. Y.) 169 Fed. 927. *Contra, In re Markowitz* (1916, E. D. Pa.) 233 Fed. 715; *United States v. Orend* (1915, W. D. Pa.) 221 Fed. 777. Such a correction has been refused, much more questionably, even when the error was purely clerical, the oral declaration itself having complied with legal requirements. *In re Hennig* (1918, E. D. N. Y.) 248 Fed. 990 (error as to date of birth). The 200 Fed. 330. On the other hand, a supplementary paper correcting an error of the declarant not so material as to vitiate the final decree has been allowed. *In re Hennig* (1918, E. D. N. Y.) 248 Fed. 990 (error as to date of birth.) The decision in the principal case seems sound, insofar as it involves a reversal of the *nunc pro tunc* order. The further holding that the specific renunciation prescribed is an indispensable part of the declaration of intention can hardly be criticised in view of the express language of the statute. See *United States v. Vogel, supra*, 362, 363; *cf. Ex parte Lange* (1912, E. D. Mo.) 197 Fed. 769; *cf. In re Stack, supra*. Inasmuch as the record in the case, barring the erroneous *nunc pro tunc* order, disclosed German nationality, this would be sufficient to support the decision under Comp. Stat. 1916, sec. 4352, the petition having been filed subsequently to April 6, 1917. *United States v. Meyer* (1917, C. C. A. 2d) 241 Fed. 305. From the language of the opinion, however, it is inferable that the court regarded the petitioner's case as irremediable by any amendment of the petition, or by a new petition, with an averment of French citizenship. Such a conclusion, based upon the ground that the declarant must decide at his peril the identity of his allegiance, would be contrary to some well considered decisions. *Cf. United States v. Orend, supra; In re Denny* (1917, S. D. N. Y.) 240 Fed. 845; *cf. In re Markowitz, supra; cf. United States v. Viaropoulos* (1915, W. D. Pa.) 221 Fed. 485. *Contra, In re Friedl, supra; In re Lewkowicz, supra*. The specific renunciatory clause, prescribed by Congress in addition to the general renunciation of allegiance, could serve no rational purpose except that of additional specification. No legislative disposition to insist upon a correct knowledge of the identity of the declarant's allegiance is indicated by the mere fact that the specification is required. *Cf. In re Denny, supra; cf. In re Hennig, supra*. Such a legislative intention is rendered the more improbable in view

of the formidable legal difficulties so frequently involved in deciding between conflicting claims of allegiance.

ALIENS—PHILOSOPHICAL ANARCHISTS—DEPORTATION.—The petitioner, an alien philosophical anarchist, was heard before the immigration authorities and an order for his deportation was issued under the Act of Congress of Feb. 5, 1917, ch. 29, 39 Stat. L. 874, which provides for the deportation of "any alien who at any time after entry shall be found advocating or teaching . . . anarchy." It appeared that petitioner did not believe in violence under any circumstances but merely claimed the privilege, which he undertook to exercise, of propagating through lectures the theory that society would be better off without government. The petitioner applied for a writ of *habeas corpus*. Held, that the writ should be denied since the order for deportation was proper. *Lopez v. Howe* (1919, C. C. A. 2d) 259 Fed. 401.

The petitioner was admitted by the court to belong to the "class of honest and law-abiding visionaries, who are convinced that the interest of society would be promoted by the abolition of all government whatsoever. Their propaganda is purely educational in character and violence does not enter into it." Yet, as Congress had made no discrimination between philosophers and preachers of violence in describing "anarchists" subject to deportation, the court felt constrained to affirm the order. There seems no doubt that every government must have the privilege to preserve itself against disruptive agencies; and the *mores* of the time must determine what such agencies are. Beliefs and opinions not sufficiently in harmony with the *mores*, if deemed disruptive, must perforce, it would seem, be suppressed although the penalizing of mere opinion seems mediaeval. Difficulties in administration arise during transitional periods of changing *mores*, when the agencies deemed disruptive grow in variety and power. But if the oral teacher of philosophic anarchy is expelled—and this would seem a defensible policy—must we not logically suppress the more powerful influence of the books of Proudhon, Tolstoi, Ferrer, Zola, Kropotkin, and others by establishing an *index expurgatorius*? The privilege to exclude or expel aliens considered deleterious to the public welfare is inherent in all government. *Fong Yue Ting v. United States* (1893) 149 U. S. 698, 13 Sup. Ct. 1016. In the United States the grounds of exclusion and expulsion are prescribed by statute. Act of February 20, 1907, 34 Stat. L. 898; February 5, 1917, 39 Stat. L. 874, Act of Oct. 16, 1918, Public No. 221, 65th Cong. The same is true of Great Britain and Brazil. Great Britain, Aliens Act of 1905, 5 Edw. VII, ch. 13; Brazil, Law of January 7, 1907, (1908) 4 *Rev. de Droit Int. Privé*, 855, U. S. For. Rel. 1907, I, 113. While the terms of the statutes are broad, most governments have not by enumeration of specific grounds limited their freedom of action; for example, Italy, Germany, Roumania, etc. Martini, *L'Expulsion des étrangers* (Paris, 1909) 42ff. The petitioner in the instant case had resided in the United States fifteen years. In several countries a domiciled alien cannot be expelled. Thus, in Belgium and Venezuela the domiciled alien and in Brazil, the alien who has resided in the country two years, is exempt. Belgium, Law of Feb. 12, 1897; Halot, *Traité des étrangers en Belgique* (Bruxelles, 1900); Brazil, Instructions of May 23, 1907, in execution of the law of Jan. 7, 1907, (1910) 37 *Clunet*, 1377; Venezuela, Law of April 16, 1903, art. 6; Borchard, *Diplomatic Protection of Citizens Abroad* (1915) sec. 27. Possibly these statutes may recently have been amended. Until 1910 the time for deportation of undesirable aliens was limited in the United States to three years after arrival. By the amendment of March 26, 1910, 36 Stat. L. 263, alien prostitutes or those bringing in women for immoral purposes are deportable any time. *United States v. Czeslicki* (1913, M. D. Pa.) 209 Fed. 496. By the act of 1917 the period of limitation was removed from those advocating